



ADR NEWSLETTER



Air Force ADR Program Office

July 2005

Office of the General Counsel

Focus Points

- **ADR AFI Implementation**
- **FY04 ADR data call results**
- **ADR E-learning Initiative**
- **New Model Standards of Conduct**
- **Mediator Certification Program**



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The Bottom Line

The first few months of 2005 have been as eventful as any in the history of the ADR Program, with many new challenges, opportunities, and major initiatives. You already are aware

of the Air Force budget situation, which is affecting our program as it is other Headquarters activities. In an era of tighter budgets, we are redoubling our efforts to promote ADR and other conflict resolution processes as cost-effective ways to stretch scarce resources in support of the mission.

We've had some personnel changes over the last few months. In October we welcomed Lynda O'Sullivan as the new Assistant Deputy and Acquisition and Environmental ADR director. Before joining GCD, Lynda was a partner in the Washington D.C. law firm Miller & Chevalier. Lynda practiced in the field of contract law and litigation for over 25 years and is a contributing author in the Nash & Libin text, *Cost Reimbursement Contracting* (3d ed. CLH). Most of you know that Lt Col Marc Van Nuys retired from active duty and became Mr. Marc Van Nuys, but is still our Workplace ADR Director. More recently, we added two more attorneys, Kim Manganello, an honor captain and acquisition law specialist, and Linda Myers, who comes to us from the Office of Special Counsel. Linda has a long record of experience in workplace dispute mediation and ADR program management, with prior stints at the Equal Employment Opportunity Commission and the Federal Mediation and Conciliation Service. We're thrilled to have these great additions to the GCD team!

- Joe McDade

ADR AFI Implementation

Since publication of AFI 51-1201, *Alternative Dispute Resolution in Workplace Disputes* on 21 April 2004, SAF/GCD has taken several important steps to implement the AFI in the field. On June 10, 2004, former Air Force Secretary Dr. James Roche issued a memorandum to senior Air Force commanders exhorting them to give implementation of the Civilian Workplace Dispute ADR regulation their "personal attention." Moreover, SAF/GCD publicized AFI 51-1201 within the Air Force Civilian Personnel Community through DP newsletters, messages to the field and conferences. The conferences included the AFMC CPO Conference, the World-Wide CPO conference, and the AETC ADR Program Design Workshop in San Antonio last August (see photo below).

As a result, ADR policy memoranda have been issued by AFMC/CC, AETC/CC, AMC/CC, ACC/CC, PACAF/CC, AFSPC/CC, and USAFE/CC, as well as the Air Force Academy commander. In addition, AFMC, AETC, ACC, AMC, AFSPC, PACAF and USAFE have implemented ADR plans for their respective commands. Thus, within one year of publication of AFI 51-1201, ADR policies and plans have been implemented in just about every Command with significant workplace dispute activity. Finally, all commands have ADR champions. Base ADR program managers and practitioners should get to know their MAJCOM ADR champions, as they are the crucial link with GCD for ADR program support and assistance. Thanks and congratulations to everyone who helped make 2004 a successful initial year for ADR program implementation!

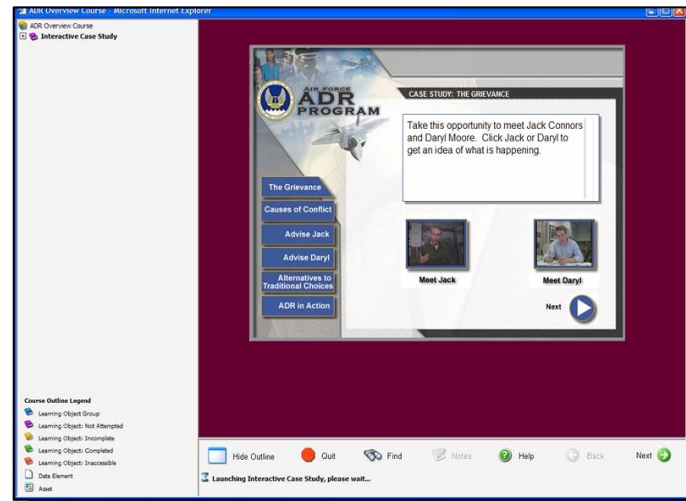
NEW ADR AWARD

The General Counsel's award program (AFI 36-2869) has been expanded to include an **ADR Award for individuals and organizations.** An interim change to the AFI will be published soon! Stay tuned for more information.

ADR E-learning Initiative

The ADR Program Office announces the development of an ADR Awareness e-Learning course, which will be made available online very soon to Air Force personnel. The highly interactive module is designed around a case study format that takes the user through a workplace dispute scenario. The case study presents the user with opportunities to decide how the dispute should be handled. In the process, the user will be introduced to a range of alternative dispute resolution options and techniques and will learn some of the potential benefits of ADR over traditional choices for resolving disputes. A user will be able to go through the online course from his desktop computer in as little as 12 to 15 minutes.

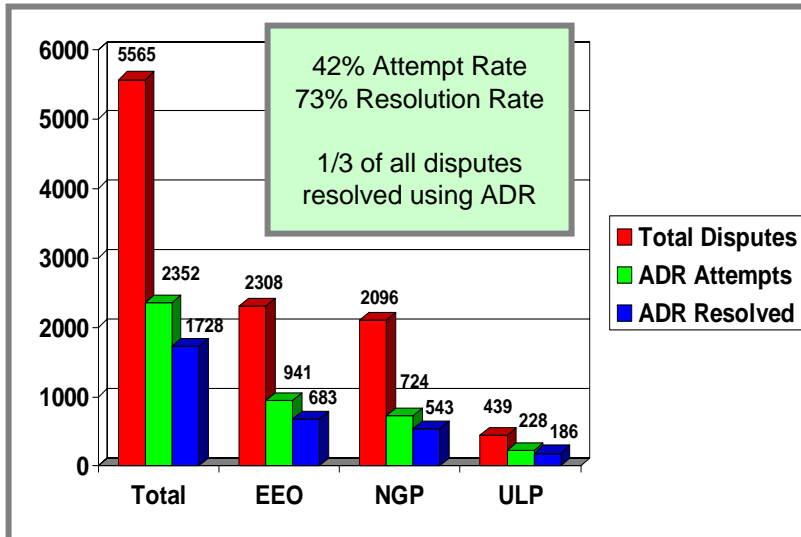
The course is intended to give students a basic understanding of what ADR is, how major ADR techniques such as mediation work, and how ADR can benefit them as an Air Force employee and as a supervisor.



The online content and design for the course was developed in collaboration with Air Force Legal Information Services (AFLSA/JAS), with extensive involvement from Major Rooker Mears and Captain David Houghland. Primary design and development of the course is nearly complete, and the beta version will be available for select users to test and evaluate. The final version will be available to all personnel shortly thereafter.

FY 2004 ADR DATA

The Air Force ADR Program Office recently concluded its analysis of FY 2004 ADR data submitted last fall. As shown in the chart, over 5,500 workplace disputes were initiated. Of these, 42% were referred to ADR of some type, and 73% were resolved. Effectively, one-third of all workplace disputes were



resolved by ADR in FY 04. Although impressive, we think the AF can do better. Our new metric is to attempt ADR in 50% of all eligible disputes. We've been hovering in the 40's for some time now, so we think the 50% goal is attainable. In addition to ADR attempts and resolutions, our data show the average time to conduct ADR was only 27 days, well below the averages for more formal processes.

customer feedback, the results were encouraging. Overall, almost 90% of respondents were satisfied with their ADR experience, and 95% rated their mediator or other neutral as good or excellent. These results speak well of the skill and dedication of our collateral duty mediator corps.

Related Story, p. 4:
FY 04 ADR Top Performers

Upcoming Training and Events

The ADR Worldwide Conference originally scheduled for July has tentatively been rescheduled for the October 2005 timeframe. More information as it becomes available.

Mediator's Corner

Marv the Mediator answers your questions about mediation practice in Air Force workplace disputes.

Dear Marv—

I recently mediated a difficult EEO case. The real sticking point was money, but after hours of going round and round, the parties orally agreed that the agency would pay the complainant a lump sum of \$5,000 to resolve all monetary claims. With that behind us, a full settlement was imminent (or so I thought). However, during a subsequent caucus over the remaining issues, the complainant informed me that he had changed his mind on the \$5,000, and that management would have to double it or no deal. Seeing any hope of a settlement flying rapidly out the window, I used reality testing to strongly suggest that going back on the "deal" now would cause management to walk away, leaving the complainant with nothing except an unproven EEO case, which in my opinion was unlikely to win on the merits (although I did not tell him this). He wouldn't budge. When we reconvened in joint session I informed management of the complainant's decision. As I expected, Management withdrew the offer and terminated their participation in the mediation. The EEO complaint was subsequently rejected, and now the complainant says it's my fault the case didn't settle. I don't think it was, but is there anything I could have done to save the mediation from imploding like that? —Burned

Dear Burned—

While every mediator likes to boast of a high success rate (the closer to 100% the better!), not every case is destined to settle and it's not your job as a mediator to settle at all costs. Parties have a right to determine the outcome of their own dispute, assuming they are competent and not acting under duress or coercion. Here, the complainant freely exercised his right of self-determination, even if it turned out to be an unwise choice. Your use of reality testing to ensure the complainant was aware of the likely consequences of his decision was entirely appropriate. Doing anything more could be viewed as abandoning your role as a facilitator and becoming a decision-maker. One suggestion I would make is to insist that the party, not you, inform the other side of the decision to repudiate a previously-agreed-to term. Having to tell them himself may be a little more daunting than having you do it, which might just be enough to convince him to stick to what he agreed to. Had that happened here, your success rate may very well have been one case higher.

--Marv

New Federal Supplement to Model Standards of Conduct Being Readied

A subcommittee of the Interagency ADR Working Group Steering Committee has been working for several months on a proposed federal supplement to the revised Model Standards of Conduct for Mediators. The supplement, when completed and approved by the IADRWG Steering Committee, will be available to federal agencies for their use in providing ethical guidance to agency mediators. SAF/GCD has been participating in the development of the supplement.

The proposed supplement, which has not reached the final draft stage yet, modifies for federal practice the new Model Standards of Conduct for Mediators, revised in 2004 by a joint committee of the American Bar Association, the Association for Conflict Resolution and the American Arbitration Association, who were also responsible for the current version of the Model Standards, issued in 1994. The 1994 Model Standards form the basis of the standards of conduct for Air Force mediators found in AFI 51-1201, paragraph 23.

Once the new Model Standards are approved by the three governing organizations (the ABA approved them several weeks ago), the proposed federal supplement will be presented to the IADRWG Steering Committee for review and approval.

The new Model Standards do not materially change the current standards; they still address the concepts of self-determination, impartiality, conflicts of interest, competence, confidentiality, and quality of the mediation process. Parts of the standards are binding on practitioners, others are merely advisory. The proposed federal supplement modifies some of the standards to accommodate federal requirements, and adds "federal guidance notes" to alert practitioners to federal-only considerations, such as compliance with federal ethics rules and regulations, confidentiality under the Administrative Dispute Resolution Act, and attendance of federal employee unions in mediation of EEO complaints.

It is anticipated the final version of the supplement will be available later this year. SAF/GCD will be looking into incorporating the supplement into a future revision of AFI 51-1201.

FY 04 Top Performers

The final ADR reports for Fiscal Year 2004 have finally been sent to their respective MAJCOMs, and SAF/GCD would like to acknowledge those bases that showed outstanding performance or significant improvement in use of ADR processes to resolve workplace disputes. One base from each Command was selected as a "top performer," based on its usage of ADR and success in using it, as reflected in ADR attempt and resolution rates. Other bases showing impressive performance or significant improvement are also recognized for honorable mention.

ACC

Davis-Monthan AFB

Barksdale AFB – Honorable Mention

AETC

Randolph AFB

Goodfellow AFB – Honorable Mention

Keesler AFB – Honorable Mention

AFMC

Robins AFB

Hill AFB – Honorable Mention

Wright-Patterson AFB – Honorable Mention

Brooks City-Base – Honorable Mention

AFRC

March ARB

Niagara Falls ARS – Honorable Mention

AMC

Andrews AFB

Travis AFB – Honorable Mention

Pope AFB – Honorable Mention

AFSPC

Los Angeles AFB

Buckley AFB – Honorable Mention

Schriever AFB – Honorable Mention

PACAF

Elmendorf AFB

Kadena AB – Honorable Mention

Misawa AB – Honorable Mention

USAFE

Ramstein AB

Spangdahlem AFB – Honorable Mention

CORE – Call for Volunteer Mediators!

In January 2005 the Air Force began offering a faster, more streamlined formal EEO complaint process, known as CORE (for Compressed, Ordery, Rapid, Equitable) at 31 test bases, with plans to go Air Force-wide this summer. The CORE program is a voluntary option for EEO formal complainants, and stresses mediation as the first step. GCD is responsible for providing qualified Air Force mediators when participants elect mediation. We have a continuing need for experienced volunteer mediators for CORE cases. All CORE mediations involve TDY to another base, and will not involve more than two assignments per year, unless the mediator is willing and able to do more. To volunteer, or if you have questions, please call Rachel Birthisel or Nicola Gurwith in SAF/GCD at DSN 227-0378.

Mediator Certification Program

SAF/GCD is currently staffing a new voluntary mediator certification program which, when implemented, will be available to every Air Force mediator. Participation is voluntary—mediators currently on base rosters do not have to apply for certification to continue mediating Air Force workplace disputes. However, for those who want and deserve official Air Force recognition for their expertise as mediators, certification is a great way to get it.

GCD will serve as the certifying authority, and will offer four levels of certification, from Basic to Master, commensurate with experience, training, and demonstrated effectiveness. We hope to roll it out in June, so be on the lookout!



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URL: <http://www.adr.af.mil/>

ADR Marketing Materials

Here are examples of *GREAT* brochures some bases are using to market their ADR programs and explain the benefits of ADR to employees and management alike!

Offutt AFB ADR Brochure

FOR MORE INFORMATION

Please Contact
Offutt ADR Champion
Pamela Dowell
DSN 271-6882

Pamela.Dowell@offutt.af.mil



Tinker AFB ADR Program Brochure

Preparing for Mediation



Mediation can be like child's play if you are prepared.

Knowing what to expect before you attend the mediation session will assist you in being better prepared to discuss your concerns. This brochure is designed to assist you in that preparation.

Where: Report to the ADR Office for your ADR session. If the session is to be elsewhere, you will be taken there by ADR staff or notified prior to the session.

When: The ADR session will be set at a time which is convenient for everyone who needs to attend.

Who: The mediator is an experienced official, not from your organization, who will assist you and the other party in gaining good, clear information so that you can negotiate your concerns and find a solution.

Additional Who: Those attending will be determined by the type of case you have, those involved, and the issue.

Timelines: The ADR process does not interfere in any way with your complaint timelines should your issue not be resolved and you decide to pursue it through a complaint process—however, be sure that you have filed timely in that complaint process. Merely taking your issue to the ADR process **does not** mean you have filed anything.

How Long: Generally when it comes to workplace disputes, mediations take around 4-6 hours. Plan to take enough time to thoroughly discuss your issues and options for resolution. The more prepared you are and the less emotional, the quicker the session.

Interruptions: No tape recorders are allowed due to confidentiality of the discussions. Also, cell phones, beepers, radios, and palm pilots should be turned off or left elsewhere.

Breaks: You may take breaks as often as you need for the purpose of settlement.



Leave yourself some room to maneuver whenever you negotiate. Even the best negotiators are ready for any options that might come their way.

What to Say: When the mediator offers you the opportunity to make an opening statement, tell the other party, as clearly but briefly as you can, what your concerns are. Discuss with them potential options for fixing the problem.

Confidentiality: Some mediation sessions are completely confidential, some only partially. Discuss your session requirements with the ADR staff and do not violate any of the requirements.

Documentation: Everyone is allowed to take notes during the sessions, however, at the end of the session, the mediator will shred all notes to maintain confidentiality. If you brought documentation or notes with you, you may take those with you when you leave (as long as you have not written on them).

Representatives: Depending on the type of case you have, you may be allowed to have representation during the session. A place will be provided for you to obtain confidential counsel.

Resolutions: Agreements must be coordinated before they are binding. Discuss agreement requirements with your ADR staff.

Notifications: Notify your supervisor and representative when your ADR appointments or session will be.

FOR MORE INFORMATION

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